



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

April 19, 2006

1. Bill Number and Sponsor:

Senate Bill 1040
Senator Patricia Birkholz

2. Purpose:

This bill would amend Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, to authorize the Department of Environmental Quality (DEQ), to issue a general permit (GP) for the removal of small dams that meet specified criteria. In addition, the bill requires posting of pending applications, public notices, and public hearing schedules on the DEQ Web site; and removes the requirement that the DEQ conduct a site visit for projects within a minor permit category.

3. How This Legislation Impacts Current Programs in the Department:

Currently, there is no explicit authority to issue GPs in Part 301. This bill will create the authority to issue a GP for a limited category of activities—small dam removal. Issuance of a GP will involve convening a work group to develop the language, sending notice to the public and to the U.S. Environmental Protection Agency (USEPA), addressing public and USEPA comments, and issuing the final permit. Once the final GP is issued, the Land and Water Management Division (LWMD) may then accept applications and provide letters of authorization to small dam removal projects that meet the criteria in the GP. To ensure that this new administrative tool does not create confusion, the LWMD will develop informational materials to guide permit applicants. Additionally, by removing the requirement that the DEQ conduct a site visit for minor projects, this bill will allow the LWMD to further streamline permit processing for minor projects.

4. Introduced at Agency Request:

No

5. Agency Support:

Yes

6. Justification for the Department's Position:

- a. Removal of small dams has been identified as one of the most effective ways to restore the natural flow regime of river systems. This bill allows the DEQ to

streamline the authorization for small dam removal projects while preventing potential adverse impacts. Although the removal of any dam has the potential for adverse impacts (such as downstream sedimentation or upstream migration of invasive fish species), the definition of a qualifying dam in SB 1040 limits the scope to only those projects that have a minimal chance of causing harm, while at the same time providing the opportunity for the DEQ to impose conditions or require performance bonds to even further reduce the potential for harm.

- b. The DEQ would prefer to have blanket authority to issue GPs across all program areas in order to provide administrative flexibility and to ensure the integrity of the regulatory framework. Such blanket authority would provide the DEQ with the opportunity to streamline permit processing for select regulated activities that pose a minimal threat to environmental quality if done according to accepted guidelines. Although the DEQ would prefer to have broad GP authority, issuing a GP for this category may serve as a model to develop greater comfort among the legislature and the regulated community for the use of this tool.
- c. Any dam removal, regardless of size, can impact private rights, the public trust, and the environment. Public input is an important component of DEQ programs. Although there will be limited opportunity for public notice and comment on each application for an authorization to remove an individual dam under the GP, the public will have an opportunity to comment when the GP for dam removal is developed and issued.
- d. Removal of the site visit requirement for minor project categories will allow the LWMD to further streamline the permit review process for select categories of minor activities. This will allow the staff to focus more time reviewing permit applications for projects that have larger potential impact, responding to citizen inquiries, or investigating violations and complaints.
- e. The careful removal of selected dams represents the best opportunity to restore the ecological integrity of Michigan's rivers and streams. This legislative initiative could be the first step in the development of a larger coordinated effort to promote river restoration through dam removal. Such an effort could include developing a fund to help finance dam removal projects and expanding the dam safety unit resources to create the opportunity for our engineers to provide technical assistance, identify dams that have a high restoration potential, and integrate dam removal into watershed management plans.

7. State Revenue/Budgetary Implications:

According to the DEQ's dam database, there are 124 known dams that would meet the definition of a "small dam" (i.e., less than two feet height and less than

two-acre impoundment). Assuming that all the known qualifying dams are removed using this regulatory tool, the total revenue generated would be \$6,200. This falls well short of the funds required to sustain the administrative activities required under the bill. Without additional resources, the implementation of this bill will be paid for out of the LWMD's existing general fund allotment.

It is important to note that there may be an estimated 100 additional small dams that could qualify (these are either in the database without information on head height and impoundment size, or not in the dam database at all). Accordingly, the overall revenue, assuming all were removed, could be greater. Notwithstanding this additional revenue generated from permit application fees, the funds would still fall short of covering the cost of administering the program.

8. Implications to Local Units of Government:

Local governments will benefit from this bill in two ways. First, insofar as this will encourage small dam removal within their jurisdiction, their communities will benefit by reducing the risk of catastrophic dam failure and restoring the health of rivers and streams. Second, local units that own small dams and would like to remove them can utilize this new option to obtain a permit.

9. Administrative Rules Implications:

Administration of the provisions in this bill will not require new administrative rules.

10. Other Pertinent Information:

Strategic removal of small dams presents a great opportunity to restore the natural flow regime to Michigan's rivers and streams. The DEQ is pleased to work with the Legislature, the Department of Natural Resources, and our conservation partners to help promote river restoration through small dam removal. This bill will send a positive message to dam owners and conservation groups interested in river restoration.

A handwritten signature in black ink, appearing to read "SE Chester", followed by a smaller signature that appears to read "Adm".

Steven E. Chester, Director
Department of Environmental Quality

